

IN THE HIGH COURT OF TANZANIA

MAIN REGISTRY

(AT DAR ES SALAAM)

MISCELLANEOUS CIVIL APPLICATION NO. 10 OF 2023

OLAIS LUCAS LAIZER ----- APPLICANT

Versus

TANZANIA AGRICULTURAL DEVELOPMENT

BANK LIMITED ----- 1ST RESPONDENT

THE CHIEF SECRETARY ----- 2ND RESPONDENT

THE ATTORNEY GENERAL ----- 3RD RESPONDENT

R U L I N G

19th May & 1st June, 2023.

MGONYA, J.

This application is brought by way of Chamber Summons of the Applicant under **section 14 (1) and (2) of the Law of Limitation Act, Cap. 89 [R. E. 2002]** seeking among others before this court, an extension of time within which he can file an Application for leave to apply for judicial review to challenge

the decision of the 2nd Respondent which allegedly contained irregularities and illegality.

The Application is supported by an Affidavit of **OLAIS LUCAS LAIZER**, the Applicant and countered by an Affidavit of **Edna Nyatta**, Principle officer of the 1st Respondent.

The Application was disposed orally where by the Applicant was presented by **Mr. Remmy Ephraim William** assisted by **Mr. Davis Vedustus, Learned Advocates**, while the Respondents were presented by **Mr. Edwin Webiro**, assisted by **Ms. Lilian Mndeme the learned State Attorney**.

In support of the Application, Mr. Vedustus advanced the grounds for the application being the illegality and irregularity of the decision of the Chief Secretary. That the said decision was illegal as it confirmed the decision of the Public Service Commission and refused to forward the matter to the President of the United Republic of Tanzania. That the justification for extension of time is explained in the 14th paragraph of the Applicant's Affidavit.

Further Mr. William advanced the reason for delay that was due to issuing of statutory Notice to the 3rd Respondent. He insisted that the illegality raised is a good cause for extension of time. He stressed on this point by referring to the case of

CHARLES RICHARD KOMBE VS KINONDONI MUNICIPAL COUNCIL, CIVIL REFERENCE NO. 13 OF 2019.

Responding to the above submission, Mr. Webiro, Learned State Attorney, at its outer face, adopted the Counter affidavit as part of his submission. He then averred that this Application can only be granted if the Applicant has provided sufficient reasons. He insisted that the Applicant must account for all the period of delay and the delay should not be inordinate. Further, the Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take and if there exist point of law sufficient importance such as illegality of the decision sought to be challenged.

The Respondents' Counsel countered this application that the Applicant has failed to account for the delay from 11/3/2022 when the impugned letter of the Chief Secretary was issued to him to 3rd August, 2022 when this application was filed, which amount to 147 days and has not been accounted for.

Further, he insisted that the delay was inordinate since the decision of the Chief Secretary was availed to the Applicant to the date when the Application was filed, 301 days has lapsed.

Further that the Applicant was not diligent as he failed to file the Application within time and there is no any illegality in that respect.

Before rejoinder, Mr. William, Learned Advocate, prayed among others the matter be withdrawn after Mr. Webiro, Learned State Attorney raised an objection that the letter of the Chief Secretary impugned was not pleaded and attached. However, this Court ruled out that the prayer cannot be granted as will pre-empt the objection raised by the Mr. Webiro herein, and that the matter of the letter's substance as premature as the instant Application is for leave. Therefore, the Applicant's Counsel was to proceed with rejoinder as planned.

Therefore, rejoining Mr. William insisted that since there is a point of illegality raised against the impugned decision of the Chief Secretary, there is no necessity of counting for the delayed days. That the Chief Secretary had no Jurisdiction to entertain the Appeal which was directed to the Respondent.

Having gone through the submission of both parties, the main point here for determination is whether or not the Applicant has met the standards required to be granted extension of time.

It is a trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the ***delays was with the sufficient/good cause as*** per section **14(1) of the Law of Limitation Act, CAP 89 [R. E. 2019]**. See the case of

TANZANIA BREWERIES LTD VS LEO KOBELO (Civil Application 64 of 2020) [2021] TZCA 71 (12 March 2021) reported in www.tanzlii.org.tz

In the present matter, the advanced reason for the delay is filing of 90 days Statutory Notice to the 3rd Respondent. However, I find that this cannot be a sufficient reason of delay as the Applicant is intending to file an Application for Judicial Review which are governed by the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Chapter 310[R.E 2019]** which **does not require ninety (90) days' Notice to the Respondent.** It is pity that the Applicant engaged the Advocate who failed to grasp the matter of his client fall under which law despite of being given plenty of time to study the case of his client from 1st March to the 10th March, 2023 as **per paragraph 10** of the Applicant's Affidavit.

Further, it is a trite law that for this court to exercise its discretion, the Applicant must account for every day delayed, and must show that the delay was not inordinate and must show that he acted diligently. This was insisted also in the case of ***LYAMUYA CONSTRUCTION CO. LTD V BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2***

2010 AT PAGE 6; where the court outlined the following principles; I quote:

- a) The applicant must account for all the period of delay,***
- b) The delay should not be inordinate; and***
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take..."***

In the present Application, the impugned decision was effected on **11 March, 2022** and as per **Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014** the said Application was supposed to be filed within six months from the date of the decision. Thus, it was supposed to be filed before or on **11th September, 2022**. However, this Application was filed on **23rd March, 2023**, therefore delayed **for 173 days** and were not accounted for. Further, the delay **of 173 days** is inordinate delay and this court cannot let them go uncounted. Even if **the 90 days** could be applicable, the same expired on **2nd November, 2022** but in **paragraph 10** of the Applicant's affidavit, indicates that on **28th February, 2023**, almost four months is when the applicant approached his advocate for the

process of pursuing this matter, this indicates floppiness and laziness. Therefore, with that view, I find that the applicant has failed to account for the days he delayed and therefore this application finds no legs to stand.

With regard to the alleged illegality, the same was required to be on the face of the records borrowing the holding of the court of appeal in the case of ***LYAMUYA CONSTRUCTION (Supra)***. Since the impugned letter was not attached as part of the pleadings, the court cannot determine the said illegality alleged by the Applicant in paragraph 14 of his affidavit and therefore the application cannot be pegged on it either.

From the above findings, I must conclude that this Application has no merit as the Applicant has failed to illustrate good cause to persuade this court to grant him extension of time.

In the event therefore, the **Application is hereby dismissed**. Considering the circumstances of this matter, I order no costs.

It is so ordered.

DATED at Dar es Salaam this **1st day of June, 2023.**



L. E. MGONYA

JUDGE

Court:

The Ruling delivered by Hon. **H. S. Mushi, Deputy Registrar** on this **1st day of June, 2023** in the presence of the Learned State Attorney Mr. Daniel Nyakiha for all Respondents and holding brief for the Advocate Remmy William for the Applicant.



L. E. MGONYA

JUDGE

1/6/2023

